



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 33031054

Date: AUG. 16, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a business manager in construction and architectural engineering, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not provided enough information about his claim of extraordinary ability. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). Under the regulation at 8 C.F.R. § 204.5(h)(3), a petitioner can demonstrate international recognition through a one-time achievement in the form of a major, internationally recognized award, or the petitioner can submit evidence that meets at least three of the ten criteria summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;

- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments;
- (ix), High remuneration for services; and
- (x), Commercial success in the performing arts.

If the above standards do not readily apply to the individual's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

If a petitioner meets the initial evidence requirements, we then assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination).

When he filed the petition in May 2023, the Petitioner did not claim to have received a major, internationally recognized award. The petition included the following supporting documents, translated from Russian, but the Petitioner did not explain which of the criteria he intended to address with that evidence:

- Job announcements for positions in construction management;
- An invitation for the Petitioner to “participate . . . as [a] member of the Competition Commission for selection of the most interesting modern projects and solutions for public urban spaces” at an “exhibition-presentation” in Moscow in 2019; and
- Letters and certificates issued to the Petitioner and his company, acknowledging the company's involvement in various municipal and private projects.

The Petitioner also submitted a statement describing his career in architectural and construction engineering. This statement did not address the eligibility criteria or explain how the Petitioner has achieved sustained national or international acclaim in his field.

Because the Petitioner did not explain how the submitted materials relate to the eligibility criteria, the Director issued a request for evidence (RFE) on October 26, 2023. The Director stated: “Because the submitted documentation does not specify what criteria are claimed we are unable to address the areas of insufficiency [and list evidence that] could be submitted to overcome them.” The Director therefore asked the Petitioner to “identify the specific criteria” and explain how the evidence relates to them.

The RFE included a cover sheet with instructions for the Petitioner to submit his response “with this page on top” to a specified address in Lincoln, Nebraska. The Director also advised: “submission of evidence without this coversheet will delay processing . . . and may result in a denial.” The Director advised the Petitioner that his “response must be received in this office by January 21, 2024.” The specified due date occurred on a Sunday, and therefore the response was due on Monday, January 22. *See* 8 C.F.R. § 1.2.

The Director denied the petition on March 5, 2024, stating “no response [to the RFE] has been received.”

Review of the record shows two attempts by the Petitioner to respond to the RFE. The Petitioner submitted translated copies of two letters, which we will discuss further below. The Petitioner mailed the letters to a U.S. Citizenship and Immigration Services filing address in Lewisville, Texas, where they arrived on January 18, 2024. This delivery occurred within the time permitted, but the Petitioner did not send them to the correct address; did not include the RFE response cover sheet; and did not otherwise indicate that the materials were submitted in response to an RFE. Therefore, the materials did not timely reach the record. Filings are considered to be “received” as of the actual date of receipt *at the location designated for filing*. See 8 C.F.R. § 103.2(a)(7)(i).

About three weeks later, the Petitioner mailed additional copies of the same two letters to the correct Nebraska address specified in the RFE. They were delivered on February 12, 2024, 21 days after the RFE filing deadline. Additional time to respond to an RFE may not be granted. 8 C.F.R. § 103.2(b)(8)(iv). As before, this second mailing did not include the cover sheet or other indication that the materials were submitted in response to an RFE.

While the denial notice did not take the above submissions into account, it remains that the Petitioner did not submit a timely response to the RFE that complied with the Director’s instructions and requirements.

Furthermore, the two letters that comprise the RFE response do not, on their face, address the eligibility criteria or otherwise demonstrate extraordinary ability. The letters are from clients, expressing appreciation to the Petitioner and his company for “fruitful collaboration” on unspecified projects.

An appeal must specifically identify an erroneous conclusion of law or statement of fact as a basis for the appeal. 8 C.F.R. § 103.3(a)(1)(v). The Petitioner’s appeal does not meet this requirement. The Petitioner filed a timely appeal, checking a box indicating that a “brief and/or additional evidence is attached,” but the appeal materials in the record do not include any brief, additional evidence, or statement from the Petitioner explaining the basis for the appeal.

We will dismiss the appeal, because the Petitioner has not identified any grounds for appeal and the record supports the Director’s conclusion that the Petitioner has not set forth any specific claim of eligibility for the benefit he seeks in this proceeding.

**ORDER:** The appeal is dismissed.